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MERCHANT & GOULD PC			SIMPSON, SARAH A	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,191	Applicant(s) BOSSARD ET AL.	
	Examiner SARAH A. SIMPSON	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 14-16 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-16 and 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement is made of the amendment filed 1/21/2009, amending claims 1 and 14 and adding claims 20-29. Accordingly, claims 1-8, 14-16 and 20-29 are pending and presented for examination.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

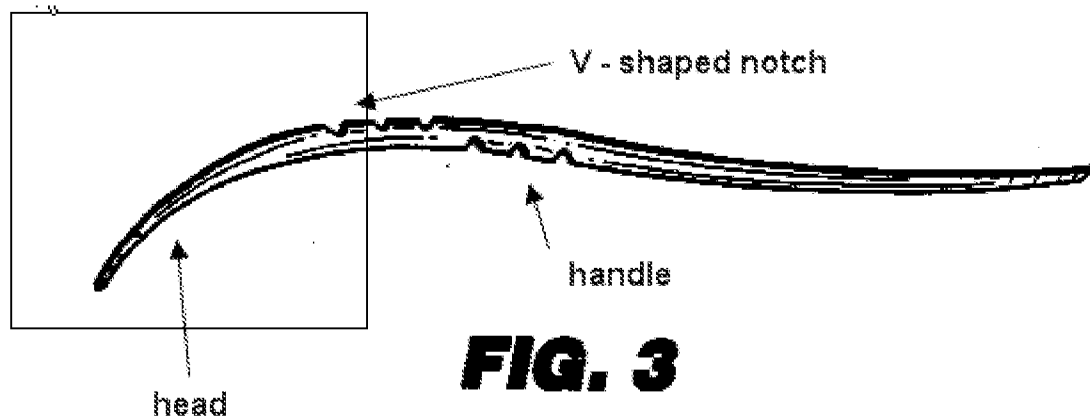
A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 20-22, 26 and 29** are rejected under 35 U.S.C. 102(b) as being anticipated by **Thierry (Des. 387,629)**.

Regarding claims 1, 20-22, 26 and 29, Thierry discloses a unitary device comprising a non-shaving head; a handle having a broadened end distal from the non-shaving head; and an upwardly open V-shaped joint between the head and the handle, permitting an articulation of the head about the handle; wherein both the non-shaving head and the handle have a concave curvature profile when used to effect the removal of the composition (see fig. 3 below).



3. **Claims 21-23 and 25-28** are rejected under 35 U.S.C. 102(a) as being anticipated by **Collins (GB 2384704 A)**.

Regarding claims 21 and 22, Collins discloses a device for removing a composition and depilated hair from the skin, the device comprising: a non-shaving head (3); a handle (2) having a curvature profile and a broadened end distal from the non-shaving head (fig. 2); and a joint (4) comprising an upwardly open V-shaped notch between the head and the handle, permitting an articulation of the head about the handle.

Regarding claim 23, Collins discloses the device wherein there is a resistance force acting against articulation of the head, which resistance force increases as the articulation increases (page 6, lines 1-10; wherein the hinge and resistant material of the device provides for a resistance force that increases as the articulation increases).

Regarding claim 25, Collins essentially discloses the device wherein when the force, causing articulation of the head, is reduced or removed the head is able to recover a previous or original position (page 2, lines 19-30).

Regarding claims 26-28, Collins essentially discloses the device being unitary and made of plastic (page 5, lines 1-4) wherein the handle is substantially rigid, the head is substantially rigid, and the joint is the only source of articulation (page 2, lines 19-30).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 1-8, 14-16, 20, 24 and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Collins (GB 2384704 A)** in view of **Bigoney (US 1,791,553)**.

Regarding claims 1 and 20, Collins discloses a device for removing a composition and depilated hair from the skin, the device comprising: a non-shaving head (2) which in use is moved over the skin to effect removal of the composition (page

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1, lines 3-6); a handle (3) having a curvature profile and a broadened end distal from the non-shaving head (fig. 2); and a joint (4) comprising an upwardly open notch between the head and the handle, permitting an articulation of the head about the handle.

Collins fails to disclose wherein both the non-shaving head and the handle have a concave curvature profile when used to effect the removal of the composition.

However, Bigoney teaches a safety razor with an improved means for holding the device in the hand, which means will tend automatically to direct its shaving action most effectively (column 1, lines 7-11). The device includes a front face and handle with compound curves, whereby important practical advantages are gained in use of the device in which the fingers naturally assume by reason of the continuous concave curvature profile of the handle and its position relative the shaving edge (column 2, lines 83-87; figs. 4-5).

Given the teachings of Bigoney, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins wherein both the non-shaving head and the handle have a concave curvature profile when used to effect the removal of the composition. Doing so proves advantageous as the fingers automatically tend to a shaving action, as disclosed by Bigoney.

Regarding claim 2, Collins discloses the device as claimed in claim 1, wherein there is a resistance force acting against articulation of the head, which resistance force increases as the articulation increases (page 6, lines 1-10; wherein the hinge and resistant material of the device provides for a resistance force that increases as the articulation increases).

Regarding claim 3, Collins discloses the invention except for wherein the head comprises an articulation about the handle through an angle in the range of 10 to 40°.

However, Collins teaches a head comprising an articulation about the handle that appears to be an angle in the range of 10 to 40° (figs. 2-4).

Given the teachings of Collins, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins with an angle in the range of 10 to 40°. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art.

Regarding claim 4, Collins essentially discloses the device wherein when the force, causing articulation of the head, is reduced or removed the head is able to recover a previous or original position (page 2, lines 19-30).

Regarding claims 5-7, Collins essentially discloses the device being unitary and made of plastic (page 5, lines 1-4) wherein the handle is substantially rigid, the head is substantially rigid, and the joint is the only source of articulation (page 2, lines 19-30).

Regarding claim 8, Collins essentially discloses the invention wherein the joint is formed by a web of plastic material at the base of an upwardly open notch between the handle and the head (page 5, lines 1-4).

Regarding claim 14, Collins discloses a device for removing a depilatory composition and depilated entrained hair from skin, the device comprising a translucent (wherein polyethylene is translucent) integrally molded thermoplastic unit (page 5, lines 1-4), the unit consisting essentially of: a non-shaving head (2), the head comprising a

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planar surface comprising a flat top surface and a fiat under surface, the planar surface ending in a single straight edge ((2a); figs. 1-4); a handle (3) having a curvature profile and a broadened end distal from the head (fig. 3); and a single joint (4) between the handle and the head providing limited articulation of the head with respect to the handle.

Collins fails to disclose wherein both the non-having head and the handle have a concave curvature profile when used to effect the removal of the composition.

However, Bigoney teaches a safety razor with an improved means for holding the device in the hand, which means will tend automatically to direct its shaving action most effectively (column 1, lines 7-11). The device includes a front face and handle with compound curves, whereby important practical advantages are gained in use of the device in which the fingers naturally assume by reason of the continuous concave curvature profile of the handle and its position relative the shaving edge (column 2, lines 83-87; figs. 4-5).

Given the teachings of Bigoney, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins wherein both the non-having head and the handle have a concave curvature profile when used to effect the removal of the composition. Doing so proves advantageous as the fingers automatically tend to a shaving action, as disclosed by Bigoney.

Regarding claim 15, Collins discloses the device wherein there is a resistance force acting against articulation of the head, which resistance force increases as the articulation increases (page 6, lines 1-10; wherein the hinge and resistant material of the device provides for a resistance force that increases as the articulation increases).

Regarding claim 16, Collins discloses the device wherein the joint is formed by a web of plastic material at the base of an upwardly open notch between the handle and a curved surface of the head (page 5, lines 1-4).

Regarding claim 24, Collins discloses the invention except for wherein the head comprises an articulation about the handle through an angle in the range of 10 to 40°.

However, Collins teaches a head comprising an articulation about the handle that appears to be an angle in the range of 10 to 40° (figs. 2-4).

Given the teachings of Collins, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins with an angle in the range of 10 to 40°. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art.

Regarding claim 29, Collins discloses the invention except for wherein both the non-having head and the handle have a concave curvature profile when used to effect the removal of the composition.

However, Bigoney teaches a safety razor with an improved means for holding the device in the hand, which means will tend automatically to direct its shaving action most effectively (column 1, lines 7-11). The device includes a front face and handle with compound curves, whereby important practical advantages are gained in use of the device in which the fingers naturally assume by reason of the continuous concave curvature profile of the handle and its position relative the shaving edge (column 2, lines 83-87; figs. 4-5).

Given the teachings of Bigoney, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins wherein both the non-having head and the handle have a concave curvature profile when used to effect the removal of the composition. Doing so proves advantageous as the fingers automatically tend to a shaving action, as disclosed by Bigoney.

Response to Arguments

7. Applicant's arguments with respect to claims 1-8, 14-16 and 20-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH A. SIMPSON whose telephone number is 571-270-3865. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah A Simpson/
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
5/22/09